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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 180807736-8736-01]**

**RIN 0648-BI41**

**Fisheries of the Northeastern United States; Framework Adjustment 12 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to approve and implement measures included in Framework Adjustment 12 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan that would allow the possession of Atlantic mackerel after 100 percent of the domestic annual harvest is projected to be caught. This action proposes to allow the possession of 5,000 lb of Atlantic mackerel after 100 percent of the domestic annual harvest is caught instead of prohibiting the possession of Atlantic mackerel for the rest of the year. This action is necessary to prevent unintended consequences and negative economic impacts to other fisheries. The intended effect of this rule is to notify the public of this proposed measure and to solicit comment on the proposed change.

**DATES:** Public comments must be received by [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS- 2018-0099, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0099](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0099), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on Mackerel Framework 12.”

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF formats only.

The Mid-Atlantic Fishery Management Council prepared a draft supplemental environmental assessment for the Framework 12 that describes the proposed action and other alternatives considered and provides a thorough analysis of the impacts of the proposed action and alternatives considered. Copies of the Framework 12 including the draft SEA and the preliminary Regulatory Impact Review, analysis are available from:

Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 State Street, Dover, DE 19901. The SEA/RIR is accessible via the Internet at <http://www.greateratlantic.fisheries.noaa.gov/> or <http://www.mafmc.org>.

**FOR FURTHER INFORMATION CONTACT:** Alyson Pitts, Fishery Management Specialist, (978) 281-9352, [Alyson.Pitts@noaa.gov](mailto:Alyson.Pitts@noaa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

When the Atlantic mackerel fishery starts each year, the various mackerel permit categories start with different trip limits. Tier 1 limited access permit holders have an unlimited trip limit, Tier 2 limited access permit holders have a 135,000-lb (61,235-kg) trip limit, and Tier 3 limited access permit holders have a 100,000-lb (45,359-kg) trip limit. The open access incidental permit has a 20,000-lb (9,072-kg) trip limit. When the fishery reaches 95 percent of the domestic annual harvest (DAH), all permits have 20,000-lb (9,072-kg) trip limits. When the fishery reaches 100 percent of the DAH, no mackerel possession is allowed by vessels with Federal mackerel permits.

The mackerel fishery also operates under a river herring and shad (RH/S) catch cap, which closes the directed mackerel fishery and implements a 20,000-lb (9,072-kg) trip limit for all permits once the catch cap, currently 82 mt of RH/S, has been projected to be caught in the directed mackerel fishery. In 2018, the RH/S cap closed the mackerel fishery effective February 27, 2018 (83 FR 8635), at which point approximately 88 percent of the mackerel DAH had been harvested. Despite the early mackerel closure due to the RH/S cap, fishery participants, including small-scale mackerel jig fishermen and larger, directed herring fishermen, whose respective fisheries occur late in the year, raised

concern to the Council that if mackerel catch reaches 100 percent of its quota and possession goes to zero pounds, they will be negatively impacted. Projections indicate a full closure could occur upon reaching 100 percent of the DAH at some point in November or December of 2018, depending on the pace of mackerel landings.

There is a management uncertainty buffer for the mackerel fishery, currently 10 percent of the commercial allocation that is primarily designed to account for the difficulty in closing a high volume fishery, such as mackerel. Where the RH/S cap has already effectively closed the high-volume part of the fishery, the buffer is unlikely to be utilized in its original intent this year. Projections from Council staff suggest that if the fishery does not go to a zero possession limit at 100 percent of the DAH but rather a 5,000-lb (2,268-kg) trip limit, then only an additional 384,000-lb (174,180-kg) would be landed, which is a small part (17 percent) of this year's management uncertainty buffer.

The Atlantic mackerel stock was recently declared overfished, with overfishing occurring in 2016. The Council is preparing a rebuilding plan via a separate action that is on track to be effective in 2019. The projections from the assessment for that action indicate that the stock can be rebuilt in 3-, 5-, or 7-year timelines even if the full management uncertainty buffer is caught this year. The rebuilding plan projections assume that the full management uncertainty buffer will be caught in 2018.

Under the proposed change to possession limits when the DAH is harvested, at its June 2018 meeting, the Council recommended to change the trip limit once 100 percent of the DAH is landed, from zero pounds to 5,000 lb (2,268 kg) through Framework 12. The New England Fishery Management Council also discussed the issue in June 2018 and expressed support for an action that would avoid the full prohibition of mackerel

possession due to impacts on the herring fishery. This action would allow a 5,000-lb (2,269-kg) possession limit after the DAH has been harvested. The Council has reviewed the proposed regulations in this rule as drafted by NMFS and deemed them to be necessary and appropriate as specified in section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

This rule proposes a 15-day comment period to ensure final measures can be effective by early November to avoid adverse economic impacts on the commercial fishing industry. The Council discussed the development of this action in April and May, and made a final recommendation in June, 2018. Because the public had an opportunity to comment on this action at these meetings, an expedited comment period would allow this action to be effective without compromising public input and our goal of implementing this action by early November.

### **Proposed Measure**

The proposed measure would allow the possession of 5,000 lb (2,268 kg) of Atlantic mackerel after 100 percent of the DAH has been projected to be harvested.

Framework 12 proposes to allow the possession of Atlantic mackerel after 100 percent of the DAH is harvested for the remainder of fishing year 2018. Current regulations prohibit the possession of Atlantic mackerel after 100 percent of the DAH is harvested.

### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Framework Adjustment 12, other provisions of the Magnuson-Stevens Act, and other applicable law,

subject to further consideration after public comment. In making a final determination, NMFS will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The purpose, context, and statutory basis for this action is described above and not repeated here.

In determining the significance of the economic impacts of the proposed action, we considered the following two criteria outlined in applicable NMFS guidance:

Disproportionality and profitability. The Regulatory Impact Review determined that the proposed measures would not place a substantial number of small entities at a significant competitive disadvantage to large entities. This measure would allow commerce to continue that would otherwise be stopped, and would benefit small business owners and commercial fishing entities. There are no distributional economic effects from this action, as proposed measures would maintain fishing opportunities for Atlantic mackerel and Atlantic herring if 100 percent of the DAH is harvested. The combined mackerel and herring fisheries are worth \$50 million or less annually, and only a relatively small portion of the overall fishery may be affected by this action. The proposed measures would allow maintenance of, or a relatively small increase in, fishery landings/revenues. As such, the proposed measures should help maintain the sustainability of the mackerel and herring

fisheries, and should positively rather than adversely affect the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

#### **List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: October 1, 2018.

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Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

#### **PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 et seq.

2. In § 648.14, revise paragraph (g)(2)(ii)(D) and remove and reserve paragraph (g)(2)(ii)(F).

The revision reads as follows:

#### **§ 648.14 Prohibitions.**

\* \* \* \* \*

(g)\* \* \*

(2)\* \* \*

(ii)\* \* \*

(D) Take and retain, possess, or land mackerel, squid, or butterfish in excess of the possession limits specified in §648.26.

\* \* \* \* \*

3. In § 648.24, revise paragraph (b)(1)(i) to read as follows:

**§ 648.24 Fishery closures and accountability measures.**

\* \* \* \* \*

(b) \* \* \*

(1)(i) *Mackerel commercial sector EEZ closure.* NMFS will close the commercial Atlantic mackerel fishery in the EEZ when the Regional Administrator projects that 95 percent of the Atlantic mackerel DAH is harvested if such a closure is necessary to prevent the DAH from being exceeded. The closure of the commercial fishery shall be in effect for the remainder of that fishing year, with incidental catches allowed as specified in § 648.26. When the Regional Administrator projects that 100 percent of the Atlantic mackerel DAH will be landed, NMFS will reduce the possession of Atlantic mackerel in the EEZ for the remainder of the fishing year to the amount specified in § 648.26(a)(2)(ii).

\* \* \* \* \*

4. In § 648.26, revise paragraphs (a)(1) introductory text and (a)(2) to read as follows:

**§ 648.26 Mackerel, squid, and butterfish possession restrictions.**



(a) \* \* \*

(1) *Initial possession limits.* A vessel must be issued a valid limited access mackerel permit to fish for, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel from or in the EEZ per trip, provided that the fishery has not been closed, as specified in § 648.24(b)(1).

\* \* \* \* \*

(2) *Closure possession restrictions--(i) Limited Access Fishery.* During a closure of the commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(i), when 95 percent of the DAH is harvested, vessels issued a limited access Atlantic mackerel permit may not take and retain, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. Pursuant to § 648.24(b)(1)(ii), when 90 percent of the Tier 3 allocation is harvested, vessels issued a Tier 3 limited access Atlantic mackerel permit may not take and retain, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours

(ii) *Entire commercial fishery.* During a closure of the directed commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(i), when 100 percent of the DAH is harvested, vessels issued an open or limited access Atlantic mackerel permit may not take and retain, possess, or land more than 5,000 lb (2.26 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

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